



Plenary sitting

B8-0551/2018 }
B8-0552/2018 } RC1

28.11.2018

JOINT MOTION FOR A RESOLUTION

pursuant to Rule 123(2) and (4) of the Rules of Procedure

replacing the following motions:

B8-0551/2018 (PPE, ALDE)

B8-0552/2018 (S&D, GUE/NGL, Verts/ALE)

on the cum-ex scandal: financial crime and loopholes in the current legal
framework
(2018/2900(RSP))

Markus Ferber, Dariusz Rosati

on behalf of the PPE Group

Pervenche Berès, Peter Simon, Jeppe Kofod

on behalf of the S&D Group

Nils Torvalds

on behalf of the ALDE Group

Miguel Urbán Crespo, Dimitrios Papadimoulis, Martin Schirdewan,

Patrick Le Hyaric, Marie-Pierre Vieu, Stelios Kouloglou, Kateřina

Konečná, Jiří Maštálka, Paloma López Bermejo, Merja Kyllönen, Matt

Carthy, Emmanuel Maurel, Kostadinka Kuneva, Marie-Christine Vergiat,

Marisa Matias

on behalf of the GUE/NGL Group

Sven Giegold

on behalf of the Verts/ALE Group

Monica Macovei

European Parliament resolution on the cum-ex scandal: financial crime and loopholes in the current legal framework (2018/2900(RSP))

The European Parliament,

- having regard to the cum-ex revelations made by a consortium of investigative journalists led by the German non-profit media organisation CORRECTIV on 18 October 2018,
 - having regard to Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (DAC2)¹,
 - having regard to Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC6)²,
 - having regard to the Fourth Inquiry Committee of the German Bundestag regarding the scandal, which culminated in a report³ in June 2017,
 - having regard to its resolutions of 25 November 2015⁴ and 6 July 2016⁵ on tax rulings and other measures similar in nature or effect,
 - having regard to its resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union⁶,
 - having regard to its recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion⁷,
 - having regard to its decision of 1 March 2018 on setting up a special committee on financial crimes, tax evasion and tax avoidance (TAX3), and defining its responsibilities, numerical strength and term of office⁸,
 - having regard to its plenary debate of 23 October 2018 on the cum-ex scandal,
 - having regard to its joint ECON/TAX3 committee meeting of 26 November 2018,
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas ‘cum-ex’ - or dividend arbitrage trading schemes - refers to the practice of trading shares in such a way as to conceal the identity of the actual owner and to enable

¹ OJ L 359, 16.12.2014, p. 1.

² OJ L 139, 5.6.2018, p. 1.

³ [Deutscher Bundestag, Drucksache 18/12700, 20.6.2017.](#)

⁴ OJ C 366, 27.10.2017, p. 51.

⁵ OJ C 101, 16.3.2018, p. 79.

⁶ OJ C 399, 24.11.2017, p. 74.

⁷ OJ C 369, 11.10.2018, p. 132.

⁸ Texts adopted, P8_TA(2018)0048.

- both or multiple parties involved to claim tax rebates on capital gains tax that had only been paid once;
- B. whereas the cum-ex scandal was revealed to the public through a collaborative investigation between a number of European news media outlets involving 12 countries and 38 reporters;
- C. whereas it is reported that 11 Member States have lost up to EUR 55.2 billion in tax revenue as a result of the scheme;
- D. whereas it is nonetheless difficult to calculate the maximum amount of the damage incurred, given that many actions started in the late 1990s and have long since been time-barred;
- E. whereas the investigation by the consortium of European journalists identifies Germany, Denmark, Spain, Italy and France as allegedly the main target markets for cum-ex trading practices, followed by Norway, Finland, Poland, Denmark, the Netherlands, Austria and the Czech Republic, and whereas these practices potentially involve an unknown number of EU Member States as well as countries of the European Free Trade Association (Switzerland, for example);
- F. whereas investigations in the most affected EU Member States are ongoing;
- G. whereas cum-ex schemes bear some of the hallmarks of tax fraud, and it needs to be assessed whether there has been a breach of either national or EU law;
- H. whereas it has been reported that these criminal practices involve EU Member States' financial institutions, including several large well-known commercial banks;
- I. whereas the final report of the Fourth Inquiry Committee of the Bundestag concluded, as well as the German courts, that tax practices such as cum-ex deals involving short sales are illegal, and that the Association of German Banks had exacerbated the problem instead of helping to resolve it;
- J. whereas in some cases relevant authorities did not conduct in-depth investigations into the information shared from other Member States regarding the cum-ex revelations;
- K. whereas the fact that foreign investors are entitled to claim a refund of the withholding taxes on dividends plays a central part in the revelations;
- L. whereas as of September 2017, the second Directive on Administrative Cooperation (DAC2) requires EU Member States to obtain information from their financial institutions and to exchange it with the Member State of residence of taxpayers on an annual basis;
- M. whereas the sixth Directive on Administrative Cooperation (DAC6) requires any person that designs, markets, organises, makes available for implementation or manages the implementation of a reportable cross-border arrangement which meets pre-defined hallmarks to report those arrangements to national tax authorities;
- N. whereas the mandate of the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) explicitly covers any relevant developments within the remit of

the committee that emerge during its term;

1. Strongly condemns the revealed tax fraud which has led to publicly reported losses of Member States' tax revenue, amounting to as much as EUR 55.2 billion according to some media estimates, which are a blow to the European social market economy;
2. Notes with concern that the cum-ex scandal has shaken citizens' trust in tax systems and stresses how crucial it is to restore public confidence and ensure that any damage caused will not be repeated;
3. Requests the European Securities and Markets Authority and the European Banking Authority to conduct an inquiry into dividend arbitrage trading schemes such as cum-ex or cum-cum in order to assess potential threats to the integrity of financial markets; to establish the nature and magnitude of actors in these schemes; to assess whether there were breaches of either national or Union law; to assess the actions taken by financial supervisors in Member States; and to make appropriate recommendations for reform and for action to the competent authorities concerned;
4. Underlines that these new revelations seem to indicate possible shortcomings in the current systems of information exchange and cooperation between Member State authorities; calls on the Member States to effectively implement the mandatory automatic exchange of information in the field of taxation;
5. Urges all Member States' tax authorities to nominate Single Points of Contact (SPoCs) in line with the OECD's Joint International Taskforce on Shared Intelligence and Collaboration, and calls on the Commission to ensure and facilitate cooperation between them, with a view to making certain that information on cases with cross-border relevance is shared rapidly and efficiently between Member States;
6. Calls on national tax authorities to reap the full potential of DAC6 with regard to the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements; calls further for DAC6 to be strengthened in order to require the mandatory disclosure of dividend arbitrage schemes, including the granting of dividend and capital gains tax refunds;
7. Urges all Member States, identified as allegedly being the main target markets for dividend arbitrage trading practices, to thoroughly investigate and analyse dividend payment practices in their jurisdictions, to identify the loopholes in their tax laws that generate opportunities for exploitation by tax fraudsters and avoiders, to analyse any potential cross-border dimension of these practices and to put an end to all these harmful tax practices;
8. Stresses the need for coordinated action between national authorities in order to guarantee recovery of illegally obtained resources from public accounts;
9. Urges the Commission to assess and the Member States to review and update bilateral taxation agreements between Member States and with third countries to close loopholes that incentivise tax-driven trading practices with the purpose of tax avoidance;
10. Calls on the Commission to revise the directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States in order to tackle dividend arbitrage practices;

11. Calls on the Commission to assess the role of Special Purpose Vehicles (SPVs) and Special Purpose Entities (SPEs) revealed by the cum-ex papers and, where appropriate, to propose limiting the use of these instruments;
12. Notes that a high share of the use of SPVs and SPEs in foreign direct investment flows has been found to be an indicator of aggressive tax planning;
13. Notes the fact that the 2008 crisis has resulted in generalised resource and personnel reductions in tax administrations; calls on Member States to invest in and modernise the tools available to tax authorities, and to allocate adequate human resources so as to improve surveillance and reduce timing and informational gaps;
14. Takes the view that the work of the TAXE, TAX2, PANA and TAX3 committees should be continued, in the forthcoming parliamentary term, in a permanent structure within Parliament such as a subcommittee to the Committee on Economic and Monetary Affairs (ECON);
15. Calls on the TAX3 Special Committee to conduct its own assessment of the cum-ex revelations and to include the results and any relevant recommendations in its final report;
16. Instructs its President to forward this resolution to the Council, the Commission, the European Banking Authority and the European Securities and Markets Authority.